SUPREME COURT, U. S.
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No. ~~6884~~ 104

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

RELIANCE PICTURE FRAME COMPANY,

Petitioner,

—against—

COVENTRY WARE, INC.,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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INDEX

PAGE

Reports of the Opinions in the Courts Below .. 1

Grounds on Which the Jurisdiction of This Court Is Invoked 2

The Questions Presented for Review 2

The Statutes, Regulations and Congressional Bills Involved in the Case 3

Statement of the Case 4

Jurisdiction of the District Court 5

Argument for Allowance of the Writ 5

The Decision of the Court of Appeals Is Contrary to the Apparent Intent of Congress That the Notice of Copyright Shall Appear on the Work of Art Itself 5

Conclusion 12

Pertinent Statutes, Regulations and Copyright Bills 13

Application for Registration of a Claim to Copyright in a Print or Pictorial Illustration (offsets) 23

Opinion of Court of Appeals 1-A

Judgment of Court of Appeals 8-A

Table of Cases Cited

PAGE

Boucher, etc., et ano. v. *DuBoyes, Inc., et al.*, 253 F. (2d) 948 (C.C.A. 2) April 7, 1958; cert. denied, 357 U.S. 936 ..... 9, 10

Fleisher Studios, Inc., et al. v. *Ralph A. Freundlich, Inc.*, 73 F. (2d) 276 (C.C.A. 2) November 5, 1934; cert. denied, 294 U.S. 717 11

H. A. Kolbe Co., Inc. v. *Armgus Textile Co., et al.*, 184 F. Supp. 423 (S.D.N.Y.) April 28, 1960; aff'd 279 F. (2d) 555 (C.C.A. 2) 9

Mazer v. *Stein*, 347 U.S. 201 8

Pearson v. *Washingtonian Publishing Co.*, 306 U.S. 30 12

Peter Pan Fabrics, Inc. et ano. v. *Candy Frocks, Inc.*, 187 F. Supp. 334 (S.D.N.Y.) June 21, 1960 9

Peter Pan Fabrics, et ano. v. *Dixon Textile Corp.*, 280 F. (2d) 800 (C.C.A. 2) May 18, 1960 9

Peter Pan Fabrics, Inc. et ano. v. *Martin Weiner Corp.*, 287 F. (2d) 487 (C.C.A. 2) January 27, 1960 ..... 8, 9

Scarves by Vera, Inc. v. *United Merchants and Manufacturers, Inc., et al.*, 173 F. Supp. 625 (S.D.N.Y.) June 8, 1959 10

Shapiro, Bernstein & Co. v. *Jerry Vogel Music Co.*, 161 F. (2d) 406 (C.C.A. 2) December 10, 1946; cert. denied, 331 U.S. 820 10

Trifari, Krussman & Fishel, Inc. v. *Charel Co., Inc., et ano.*, 134 F. Supp. 551 (S.D.N.Y.) September 28, 1955 10

Other Authorities Cited

PAGE

37 C.F.R. Ch. II §202.8(a) (Regulation) ...3, 7, 8, 21

Copyright Bills of 1906 (H.R. 19853 and S. 6330, May 31, 1906) 3, 7, 18, 19

Rules of United States Supreme Court, Rule 19(1)(b) 2

22 Statutes at Large 181 (August 1, 1882) ..3, 7, 19, 20

35 Statutes at Large 1076 (March 4, 1909) ...3,17, 18

35 Statutes at Large 1079 (March 4, 1909) ..3, 7, 16, 17

35 Statutes at Large 1088 (March 4, 1909) ...3, 7, 20

17 U.S.C.:

§5 (61 Statutes at Large 654) ..2, 3, 6, 7, 8, 13, 14

§10 (61 Statutes at Large 656) 2, 3, 6, 11, 14

§19 (68 Statutes at Large 1032) . 2, 3, 6, 7, 14, 15

§20 (61 Statutes at Large 658) 3, 5, 6, 20

§105 (61 Statutes at Large 662 .....3, 11, 21

Former 17 U.S.C. §19 (61 Statutes at Large 658) 3, 15, 16

28 U.S.C.:

§1254(1) 2

§1331 5

§1332 5

§1338 5

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COVENTRY WARE, INC.,

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Reliance Picture Frame Company (Reliance) respectfully asks that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the Second Circuit, for the reasons which follow:

Reports of the Opinions in the Courts Below

The opinion of the Court of Appeals is not yet officially reported. A copy of its opinion is appended hereto (1-A-9-A).

The opinion of the District Court is reported in 186 F. Supp. 798 (S.D.N.Y. 1960, Dawson, D.J.), and is printed in the record (15a-18a).

Grounds on Which the Jurisdiction of This Court Is Invoked

The jurisdiction of this court is invoked pursuant to Rule 19 (1) (b) of the Rules of this court, in that the Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this court; the decision casts in doubt the meaning of certain provisions of the Copyright Statute.

The date of the judgment sought to be reviewed and the time of its entry is April 3, 1961, and is appended hereto (8-A-9-A).

The statutory provisions believed to confer on this court jurisdiction to review the judgment in question by writ of certiorari is 28 U.S.C. §1254 (1).

The Questions Presented for Review

The questions so presented are as follow:

(1) To effect and retain copyright in works of fine arts (17 U.S.C. §5(g)), must not some form of the notice of copyright specified in 17 U.S.C. §19 appear on the work of art itself; a fortiori, does not a purported notice of copyright which appears only on the back, permanent base, pedestal or substance on which the work is mounted, fail of compliance with the notice provision of such statute?

(2) Does not 17 U.S.C. §19 which specifies that the notice of copyright shall be affixed to each copy

of the work published or offered for sale require that the notice be inserted or impressed in or upon the work of art; ergo, does not a purported notice contained in a label placed on the back of the work with an adhesive substance fail to fulfill such statutory specification of affixing?

The Statutes, Regulation and Congressional Bills Involved in the Case

The pertinent statutes, regulation and 1906 Copyright Bills so involved are appended printed to this petition, and are as follows:

(1) 17 U.S.C. §5 (61 Statutes at Large 654);

(2) 17 U.S.C. §10 (61 Statutes at Large 656);

(3) 17 U.S.C. §19 (68 Statutes at Large 1032);

(4) Former 17 U.S.C. §19 (61 Statutes at Large 658);

(4) 35 Statutes at Large 1079 (March 4, 1909);

(6) 35 Statutes at Large 1076 (March 4, 1909);

(7) Copyright Bills of 1906 (H.R. 19853 and S. 6330, May 31, 1906);

(8) 22 Statutes at Large 181 (August 1, 1882);

(9) 35 Statutes at Large 1088 (March 4, 1909);

(10) 17 U.S.C. §20 (61 Statutes at Large 658);

(11) 17 U.S.C. §105 (61 Statutes at Large 662);

(12) 37 C.F.R. Ch. II, §202.8(a) (Regulation).

Statement of the Case

Coventry Ware, Inc. (Coventry) brought this action against Reliance for alleged infringements of five (5) purported copyrights, seeking money damages and other relief incidental thereto (2a-4a).

Reliance's answer denied generally the material allegations of the complaint and asserted separate defenses which, inter alia, attacked the validity of the purported notice of copyright (20a-23a).

The works involved are so-called decorative molded wall plaques (certified exhibit of plaque filed herewith).

The molded part, the work of art for which copyright is claimed, is a thin, flexible piece of plastic with a three dimensional design impressed thereon. The molded part is mounted on a firm composition backing whose sole function is as a brace.

The only purported notice of alleged copyright of the plaques is on a small eliptical label placed on the composition backing with an adhesive. No notice, wording, name, initials or other indication of proprietorship of any kind appears on the molded plastic work of art itself (15a-17a).

On cross-motions for summary judgment in the District Court, it was stipulated that the sole question with respect to Reliance's liability for admitted copying of said plaques is the validity of the purported notice of copyright in its aforesaid position on the plaques, as admitted by Coventry (15a, 16a).

The District Court directed judgment for Reliance (17a, 18a).

The Court of Appeals reversed the judgment of the District Court (1-A-9-A).

Jurisdiction of the District Court

The District Court had jurisdiction of the action pursuant to 28 U.S.C. §§1331, 1332 and 1338.

Argument for Allowance of the Writ

Since the Copyright Statute makes no express designation as to where, on works of fine arts, the copyright notice shall appear; and it is universally recognized and accepted that with respect to paintings and drawings, which are in the category of the works here involved, the name of the artist appears on the work of art itself, i.e., its face; and manufacturers and vendors of works of the type here involved may have been cast in potential liability by the decision of the Court of Appeals; and this case is of first impression with respect to such works of art, this court should settle the federal question here presented to it.

The Decision of the Court of Appeals Is Contrary to the Apparent Intent of Congress That the Notice of Copyright Shall Appear on the Work of Art Itself

17 U.S.C. makes express designation as to where the notice of copyright shall appear, only with respect to books, printed publications, periodicals and musical

works (§20). No comparable designation is made in the statute with respect to the numerous other copyrightable works set forth in 17 U.S.C. §5.

It is believed, however, that the statute persuasively infers that the notice shall appear somewhere on the work of art itself.

17 U.S.C. §10 provides for publication of a work with the notice of copyright required by Title 17 affixed to each copy thereof.

§19, setting forth the form of the notice, provides an alternative form with respect to copies of works specified in 17 U.S.C. §5(f) to (k), inclusive, and significantly, distinguishes between such copies and their accompaniments, as follows:

> "* * * *Provided* (italics in original), That on some accessible portion of such copies *or* of the margin, back, permanent base, or pedestal, or of the substance on which *such copies* shall be mounted, his name shall appear * * *" (Emphasis supplied).

Were the notice not required to be affixed to the work of art itself, there would be no need for a provision for the alternative form of notice with respect to the works specified.

It was the apparent intent of Congress, by the provision for the alternative form of notice with respect to the works specified, to minimize possible disfigurement thereof. The terms of the provision for the alternative form of notice are a clear indication

of the necessity that some form of notice appear on the work of art itself.

Further support for this view is afforded upon examination of 17 U.S.C. §19 as it existed prior to its amendment in 1954, and its predecessor section, 35 Statutes at Large 1079.

22 Statutes at Large 181 and the Copyright Bills of 1906, the source of the Copyright Statute of 1909, each contained permissive provisions for placing the notice of copyright in a place other than on the work of art itself. The Copyright Statute of 1909 repealed all prior inconsistent statutes affecting copyrights (35 Statutes at Large 1088).

The failure to incorporate in 35 Statutes at Large 1079, and amendments and re-enactments thereof to the present time, such permissive provisions of the Copyright Bills of 1906 or 22 Statutes at Large 181 strengthens the conclusion that the work of art itself is required to have the notice of copyright thereon.

This case appears to be of first impression with respect to where on works of art of the type here involved the notice of copyright shall appear. Such works are in the category of fine arts, such as paintings, drawings and sculpture, and so recognized and accepted universally and by the Regulations of the Copyright Office (37 C.F.R. Ch. II, §202.8(a)).

From time immemorial, the name of the painter, if it appears at all, appears on the face of the drawing or painting, which is the work of art itself. The registration form promulgated by the Copyright Office, with respect to prints and pictorial illustrations under 17

U.S.C. §5(k), works very similar to those here in question, specifies (at page 4) that the notice of copyright should appear on the face of the work, in apparent recognition of the universal understanding with respect to such works (23).

Furthermore, the Regulations (37 C.F.R., Ch. II, §202.8(a)) specify that works of art (17 U.S.C. §5(g)) are protected as to their form but not their mechanical or utilitarian aspects. 37 C.F.R., Ch. II, §202.8(a) is cited with approval in *Mazer* v. *Stein,* 347 U.S. 201, 218.

The decision of the Court of Appeals, appearing to be contrary to the intent of the notice sections of the Copyright Statute, exposes to potential liability manufacturers and vendors of works of art of the type here involved who have relied on the universally recognized custom and usage aforesaid as being expressive of the law with respect thereto.

It would seem that the cases which follow, cited by the Court of Appeals in its decision of reversal, have application only to their own facts.

In *Peter Pan Fabrics, Inc. et ano.* v. *Martin Weiner Corp.*, 287 F. (2d) 487 (C.C.A. 2) January 27, 1960, wherein the defendant appealed from a preliminary injunction, an ornamental design was imprinted on cloth sold for eventual manufacture into dresses. A notice of copyright was imprinted on the selvage of the cloth, being repeated for each repetition of the design. When the dress manufacturers (not connected with the plaintiff vendor of the cloth) made the cloth into dresses, the notice either was cut off or sewn into the dresses so that it could not be seen.

A majority of the court held that the burden was on the defendant copyist to show that the notice could have been embodied in the design without impairing the market value of the cloth, and that whatever may be shown at the trial, the design should be protected pendente lite.

In a vigorous dissent from the majority, Circuit Judge Friendly held that Congress had not accompanied the broadening of the subjects of copyright with a relaxation of the notice requirement.

It should be observed that the majority of the court impliedly recognized that the notice ordinarily should be on the work of art itself, by affording the copyist the opportunity of proof of non-impairment of market value at the trial.

The decision appears to rest on the practical difficulty of affixing the notice on a work of art imprinted on cloth for dresses, in an industry where piracy is rampant, styling ephemeral and distaff approval at best uncertain.

To the same effect as *Peter Pan Fabrics, Inc. et ano.* v. *Martin Weiner Corp.*, supra, and all involving textiles with notice of copyright on the selvage, are *Peter Pan Fabrics, et ano.* v. *Dixon Textile Corp.*, 280 F. (2d) 800 (C.C.A. 2) May 18, 1960; *Peter Pan Fabrics, Inc. et ano.* v. *Candy Frocks, Inc.*, 187 F. Supp. 334 (S.D.N.Y.) June 21, 1960, and *H. A. Kolbe Co., Inc.* v. *Armgus Textile Co., et al.*, 184 F. Supp. 423 (S.D. N.Y.) April 28, 1960; aff'd 279 F. (2d) 555 (C.C.A. 2).

In *Boucher, etc., et ano.* v. *DuBoyes, Inc., et al.*, 253 F. (2d) 948 (C.C.A. 2) April 7, 1958; cert. denied.

357 U.S. 936, a pair of costume jewelry earrings had the notice of copyright on only one of the earrings. The manufacturer invariably sold the earrings in pairs and each pair was considered as a unit. As to a necklace, also involved, the notice was on one of the integral parts thereof. The court held the notice valid.

In *Scarves by Vera, Inc.* v. *United Merchants and Manufacturers, Inc., et al.*, 173 F. Supp. 625 (S.D. N.Y.) June 8, 1959, a notice of copyright for a design on ladies blouses was on a woven label sewn into a side seam adjacent to the bottom opening of the garment. The notice was held to meet the statutory requirement.

In *Trifari, Krussman & Fishel, Inc.* v. *Charel Co., Inc., et ano.*, 134 F. Supp. 551 (S.D.N.Y.) September 28, 1955, the notice of copyright was located on the clasp of a beaded necklace, the place where, according to the custom and usage in that industry, the name of the maker of the article usually appears. In holding the copyright infringed and the notice valid, the court stated that the nature of the article was such that the area in which the notice could be placed was necessarily limited.

Again, there appears the inference by the court that the notice must appear on the work of art itself, but such placement was apparently excused because of the physical limitations of the article involved.

In *Shapiro, Bernstein & Co.* v. *Jerry Vogel Music Co.*, 161 F. (2d) 406 (C.C.A. 2) December 10, 1946; cert. denied, 331 U.S. 820, the contents or wording of

the notice did not literally comply with the statute as to the form of the notice. The Court held there was substantial compliance with the statutory requirement and the copyright infringed.

In *Fleischer Studios, Inc., et al.* v. *Ralph A. Freundlich, Inc.*, 73 F. (2d) 276 (C.C.A. 2) November 5, 1934; cert. denied, 294 U.S. 717, the notice on a copyrighted "Betty Boop" doll omitted the corporate designation, "Inc.", from the copyright proprietor's name. The court held the identification of the copyright proprietor sufficient and the copyright infringed.

It would seem that articles of wearing apparel such as dresses, blouses and costume jewelry are subjects unto themselves and bear no reasonable relation to works of fine arts, so far as problems of styling, marketability and public demand are concerned.

There is ordinarily nor here no physical difficulty in placing the notice of copyright on the works of fine arts themselves, and such placement is in accord with universal custom and usage.

With respect to the requirement of 17 U.S.C. §10, that the notice shall be "affixed", it is noted there is no definition of the word "affixed" in the statute.

Again by inference, it seems the statute requires the notice to be inserted or impressed in or upon the work of art itself for 17 U.S.C. §105, in providing criminal penalties for certain violations of the statute, speaks of fraudulently inserting or impressing a notice of copyright.

When it is remembered that filing of a registration of a claim to copyright can be delayed for as long as 14 months after first publication (*Pearson* v. *Washingtonian Publishing Co.*, 306 U.S. 30) without loss of the right thereto, assurance, that each copy of the work from the time of the first sale to the date of registration and thereafter bore the notice, is far less when the notice appears on a label placed on the work with an adhesive than when inserted or impressed as by a dye in the manufacturing process.

Here, the claims of copyright were registered between 11 months and one year after the first sale (certified Exhibit folder of registrations filed herewith).

A monopoly with respect to the manufacture and sale of a household item ought not to be granted on the chance that a notice was affixed to each and every copy of the item sold, when more reasonable assurance thereof can be exacted without undue burden on the manufacturer.

Conclusion

The decision of the Court of Appeals appears contrary to the intent of Congress and exposes manufacturers and vendors of works of the type here involved to potential liability. The question has not been settled by this court and the Writ should be granted.

Respectfully submitted,

RAYMOND A. WERCHEN
Counsel for Petitioner

Pertinent Statutes, Regulation, and Copyright Bills

(1) TITLE 17, UNITED STATES CODE, §5 (61 Statutes at Large 654)

"§5. Classification of works for registration

The application for registration shall specify to which of the following classes the work in which copyright is claimed belongs:

(a) Books, including composite and cyclopedic works, directories, gazetteers and other compilations.

(b) Periodicals, including newspapers.

(c) Lectures, sermons, addresses (prepared for oral delivery).

(d) Dramatic or dramatico-musical compositions.

(e) Musical compositions.

(f) Maps.

(g) Works of art; models or designs for works of art.

(h) Reproductions of a work of art.

(i) Drawings or plastic works of a scientific or technical character.

(j) Photographs.

(k) Prints and pictorial illustrations including prints or labels used for articles of merchandise.

(l) Motion picture photoplays.

(m) Motion pictures other than photoplays.

The above specifications shall not be held to limit the subject matter of copyright as defined in section 4 of this title, nor shall any error in classification invalidate or impair the copyright protection secured by this title."

(2) TITLE 17, UNITED STATES CODE, §10 (61 Statutes at Large 656)

"§10. Publication of work with notice

Any person entitled thereto by this title may secure copyright for his work by publication thereof with the notice of copyright required by this title; and such notice shall be affixed to each copy thereof published or offered for sale in the United States by authority of the copyright proprietor, except in the case of books seeking ad interim protection under section 22 of this title."

(3) TITLE 17, UNITED STATES CODE, §19 (68 Statutes at Large 1032)

"§19. Notice; form

The notice of copyright required by section 10 of this title shall consist either of the word 'Copyright', the abbreviation 'Copr.', or the symbol ©, accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in subsections (f) to (k), inclusive, of section 5 of this title, the notice may consist of the letter C

enclosed within a circle, thus ©, accompanied by the initials, monogram, mark, or symbol of the copyright proprietor; *Provided*, That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright was subsisting on July 1, 1909, the notice of copyright may be either in one of the forms prescribed herein or may consist of the following words: 'Entered according to Act of Congress, in the year——, by A.B., in the office of the Librarian of Congress, at Washington, D.C.', or, at his option, the word 'Copyright', together with the year the copyright was entered and the name of the party by whom it was taken out; thus, 'Copyright, 19——, by A.B.' "

(4) FORMER TITLE 17, UNITED STATES CODE, §19 (61 Statutes at Large 658)

"§19. Notice; form

The notice of copyright required by section 10 of this title shall consist either of the word 'Copyright' or the abbreviation 'Copr.', accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in subsections (f) to (k), inclusive, of section 5 of this title, the notice may consist of the letter C enclosed within a circle, thus ©, accompanied by the initials, monogram,

mark, or symbol of the copyright proprietor: *Provided,* That on some accessible portion of such copies or of the margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright was subsisting on July 1, 1909, the notice of copyright may be either in one of the forms prescribed herein or may consist of the following words: 'Entered according to Act of Congress, in the year——, by A.B., in the office of the Librarian of Congress, at Washington'; or, at his option, the word 'Copyright', together with the year the copyright was entered and the name of the party by whom it was taken out; thus, 'Copyright, 19——, by A.B.'"

(5) 35 STATUTES AT LARGE 1079 (Act of March 4, 1909, eff. July 1, 1909)

"SEC. 18. That the notice of copyright required by section nine of this Act shall consist either of the word 'Copyright' or the abbreviation 'Copr.', accompanied by the name of the copyright proprietor, and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication. In the case, however, of copies of works specified in subsections (f) to (k), inclusive, of section five of this Act, the notice may consist of the letter C enclosed within a circle, thus: ©, accompanied by the initials, monogram, mark, or symbol of the copyright proprietor: Provided, That on some accessible portion of such copies or of the

margin, back, permanent base, or pedestal, or of the substance on which such copies shall be mounted, his name shall appear. But in the case of works in which copyright is subsisting when this Act shall go into effect, the notice of copyright may be either in one of the forms prescribed herein or in one of those prescribed by the Act of June eighteenth, eighteen hundred and seventy-four."

(6) 35 STATUTES AT LARGE 1076 (Act of March 4, 1909, eff. July 1, 1909)

"SEC. 5. That the application for registration shall specify to which of the following classes the work in which copyright is claimed belongs:

(a) Books, including composite and cyclopaedic works, directories, gazetteers, and other compilations;

(b) Periodicals, including newspapers;

(c) Lectures, sermons, addresses, prepared for oral delivery;

(d) Dramatic or dramatico-musical compositions;

(e) Musical compositions;

(f) Maps;

(g) Works of art; models or designs for works of art;

(h) Reproductions of a work of art;

(i) Drawings or plastic works of a scientific or technical character;

(j) Photographs;

(k) Prints or pictorial illustrations:

Provided, nevertheless, That the above specifications shall not be held to limit the subject-matter of copyright as defined in section four of this Act, nor shall any error in classification invalidate or impair the copyright protection secured under this Act."

(7) COPYRIGHT BILLS OF 1906 (S. 6330 and H.R. 19853, 1st Session, 59th Congress, Introduced May 31, 1906)

"SEC. 14. That the notice of copyright required by section nine shall consist either of the word 'Copyright', or the abbreviation 'Copr.', or, in the case of any of the works specified in subsections (f) to (l), inclusive, of section five of this Act, the letter C inclosed within a circle, thus: ©, accompanied in every case by the name of the author or copyright proprietor as registered in the Copyright Office; or, in the case of works specified in subsections (f) to (l), inclusive, of section five of this Act, by his initials, monogram, mark, or symbol, provided that on some accessible portion of the work or of the margin, back, permanent base or pedestal thereof, or of the substance on which the work shall be mounted his name shall appear. But in the case of works in which copyright is subsisting when this Act shall go into effect, the notice of copyright may be either in one of the forms prescribed herein or in one of those prescribed by the Act of June eighteenth, eighteen hundred and seventy-four.

The notice of copyright shall be applied, in the case of a book or other printed publication, upon its title-page or the page immediately following, or, if a periodical, either upon the title-page or upon the first page of text of each separate number or under the title heading; or if a work specified in subsections (f) to (l), inclusive, of section five of this Act, upon some accessible portion of the work itself or of the margin, back, permanent base or pedestal thereof, or of the substance on which the work shall be mounted.

In a composite work one notice of copyright shall suffice.

Upon every copy of a published musical composition in which the right of public performance is reserved there shall be imprinted under the notice of copyright the words, 'Right of public performance reserved;' in default of which no action shall be maintained nor recovery be had for any such performance although without the consent of the copyright proprietor."

(8) 22 Statutes at Large 181 (August 1, 1882)

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That manufacturers of designs for molded decorative articles, tiles, plaques, or articles of pottery or metal subject to copyright may put the copyright mark prescribed by section forty-nine hundred and sixty-two of the Revised Statutes, and acts additional thereto, upon the back or bottom of such articles, or in such other place upon them as it has here-

tofore been usual for manufacturers of such articles to employ for the placing of manufacturers, merchants, and trade marks thereon."

(9) 35 STATUTES AT LARGE 1088 (Act of March 4, 1909, eff. July 1, 1909)

"Sec. 63. That all laws or parts of laws in conflict with the provisions of this Act are hereby repealed, but nothing in this Act shall affect causes of action for infringement of copyright heretofore committed now pending in courts of the United States, or which may hereafter be instituted; but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law."

(10) TITLE 17, UNITED STATES CODE, §20 (61 Statutes at Large 658)

"§20. Same; place of application; one notice in each volume or number of newspaper or periodical

The notice of copyright shall be applied, in the case of a book or other printed publication, upon its title page or the page immediately following, or if a periodical either upon the title page or upon the first page of text of each separate number or under the title heading, or if a musical work either upon its title page or the first page of music. One notice of copyright in each volume or in each number of a newspaper or periodical published shall suffice."

(11) TITLE 17, UNITED STATES CODE, §105 (61 Statutes at Large 662)

"§105. Fraudulent notice of copyright, or removal or alteration of notice.

Any person who, with fraudulent intent, shall insert or impress any notice of copyright required by this title, or words of the same purport, in or upon any copyrighted article or with fraudulent intent shall remove or alter the copyright notice upon any article duly copyrighted, shall be guilty of a misdemeanor, punishable by a fine of not less than $100 and not more than $1000. Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, or who shall knowingly import any article bearing such notice or words of the same purport, which has not been copyrighted in this country, shall be liable to a fine of $100."

(12) 37 C.F.R., CH. II, §202.8 (a), AS AMENDED TO OCTOBER 27, 1959

"§202.8. Works of Art (Class G)-(a) In General. This class includes works of artistic craftsmanship, in so far as their form but not their mechanical or utilitarian aspects are concerned, such as artistic jewelry, enamels, glassware, and tapestries, as well as all works belonging to the fine arts, such paintings, drawings and sculpture. Works of art and models or designs for works of art are registered in Class G on Form G, except published three-dimensional works of art which require Form GG."

Application for Registration of a Claim to Copyright in a Print or Pictoral Illustration

(OFFSETS)

[*For convenience of Court and Counsel this Document is bound in on the opposite page.*]

Application for Registration of a Claim to Copyright
in a print or pictorial illustration

CLASS K | REGISTRATION NO | DO NOT WRITE HERE

Instructions: Make sure that all applicable spaces have been completed before you submit the form. The application must be *signed* at line 11. The application should not be submitted until after the date of publication given in line 6 (a), and should state the facts which existed on that date. For further information, see page 4.

Pages 1 and 2 should be typewritten or printed with pen and ink. Pages 3 and 4 should contain exactly the same information as pages 1 and 2, but may be carbon copies.

Mail all pages of the application to the Register of Copyrights, Library of Congress, Washington 25, D. C., together with 2 copies of the best edition of the work (or if appropriate, photographs—see line 4) and the registration fee of $4. Make your remittance payable to the Register of Copyrights.

1. Copyright Claimant(s) and Address(es): Give the name(s) and address(es) of the copyright owner(s). Ordinarily the name(s) should be the same as in the notice of copyright on the copies deposited. If initials are used in the notice, the name should be the same as appears elsewhere on the copies.

Name .....

Address .....

Name .....

Address .....

2. Title:

(Give the title of the work as it appears on the copies; each copy deposited should bear an identifying title)

3. Nature of Work:

(Characterize the general type of artistic work involved as, for example, painting, drawing, sculpture, design, model, etc.)

4. Optional Deposit: (Space 4 should be filled in *only* if the work is published and photographs are deposited in lieu of copies. See instructions on page 4 and accompanying insert).

Basis for claiming option. Check and fill in *one* of the following:

[ ] Monetary value (retail value per copy) ..... [ ] Weight (in pounds) .....

[ ] Size (give dimensions) .....

[ ] Fragility (give details) .....

5. Author of the Print or Reproduction: Citizenship and domicile information must be given. Where a work is made for hire, the employer is the author. The citizenship of organizations formed under U. S. Federal or State law should be stated as U. S. A. If the copyright claim is based on new matter (see line 7) give information about the author of new matter.

Name ..... Citizenship ..... (Name of country)

Domiciled in U. S. A. Yes [ ] No [ ] Address .....

6. Publication and Manufacture:

(a) Date of Publication: Give the date when copies of this print or illustration were first placed on sale, sold, or publicly distributed. (NOTE: the full date (month, day, and year) must be given.

.....

(b) Place of Publication: Give the name of the country in which this print or illustration was first published.

.....

(c) Manufacture Outside United States: If the copies of this print or illustration were manufactured outside the United States by lithographic or photoengraving process, give the name of the country of manufacture.

.....

7. New Matter in This Version: (NOTE: Leave this line blank unless the instructions apply to your work.)

If any substantial part of this work has been previously published, give a brief, general statement of the nature of the new matter in this version. New matter may consist of compilation, revision, and the like, as well as additional pictorial or graphic work.

.....

Complete all applicable spaces on next page

9. Name and address of person or organization to whom correspondence and refund, if any, should be sent:

Name ..... Address .....

10. Send certificate to:

(Type or print name and address)

Name .....

Address .....
(Number and street)

.....
(City) (Zone) (State)

11. Certification: (NOTE: Application not acceptable unless signed)

I CERTIFY that the statements made by me in this application are correct to the best of my knowledge

.....
(Signature of copyright claimant or duly authorized agent)

Application Forms

Copies of the following forms will be supplied by the Copyright Office without charge upon request:

Class A — Form A—Published book manufactured in the United States of America.

Class A or B —
- Form A-B Foreign—Book or periodical manufactured outside the United States of America (except works subject to the ad interim provisions of the copyright law).
- Form A-B Ad Interim—Book or periodical in the English language manufactured and first published outside the United States of America.

Class B —
- Form B—Periodical manufactured in the United States of America.
- Form BB—Contribution to a periodical manufactured in the United States of America.

Class C — Form C—Lecture or similar production prepared for oral delivery.

Class D — Form D—Dramatic or dramatico-musical composition.

Class E —
- Form E—Musical composition the author of which is a citizen or domiciliary of the United States of America or which was first published in the United States of America.
- Form E Foreign—Musical composition the author of which is not a citizen or domiciliary of the United States of America and which was not first published in the United States of America.

Class F — Form F—Map.

Class G — Form G—Work of art or a model or design for a work of art.

Class H — Form H—Reproduction of a work of art.

Class I — Form I—Drawing or plastic work of a scientific or technical character.

Class J — Form J—Photograph.

Class K —
- Form K—Print or pictorial illustration.
- Form KK—Print or label used for an article of merchandise.

Class L or M —
- Form L-M—Motion Picture.

Form R—Renewal copyright.

Form U—Notice of use of musical composition on mechanical instruments.

FOR COPYRIGHT OFFICE USE ONLY

Application received

Two copies received

Photographs or reproductions received

Fee received

Deposit

Renewal

Registration of a Claim to Copyright
in a print or pictorial illustration

CLASS **K** REGISTRATION NO. DO NOT WRITE HERE

This is To Certify that the statements set forth on this certificate have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

Register of Copyrights
United States of America

1. Copyright Claimant(s) and Address(es):

Name .....

Address .....

Name .....

Address .....

2. Title:

.....
(Title of the work)

3. Nature of Work:

.....

4. Optional Deposit:

Basis for claiming option:

☐ Monetary value (retail value per copy) ..... ☐ Weight (in pounds) .....

☐ Size (give dimensions) .....

☐ Fragility (give details) .....

5: Author of the Print or Reproduction:

Name ..... Citizenship .....
(Name of country)

Domiciled in U. S. A. Yes ☐ No ☐ Address .....

6. Publication and Manufacture:

(a) Date of Publication:

.....

(b) Place of Publication:

.....

(c) Manufacture Outside United States:

.....
(Name of country)

7. New Matter in This Version:

.....

Complete all applicable spaces on next page

Name Address

10. Send certificate to:

(Type or print name and address)

Name .....

Address .....
(Number and street)

.....
(City) (Zone) (State)

Information concerning copyright in prints and pictorial illustrations

When To Use Form K. Form K is appropriate for published prints and pictorial illustrations.

What Is a "Print or Pictorial Illustration"? This category (Class K) includes prints and pictorial illustrations produced by lithography, photoengraving, or other methods of reproduction. Examples: greeting cards, picture postcards, calendar illustrations, and the like.

Unpublished Works. A work cannot be registered as a "print or pictorial illustration" in unpublished form. Unpublished works are protected at common law against unauthorized use prior to publication.

Duration of Copyright. Statutory copyright in published prints and pictorial illustrations lasts for 28 years from the date of first publication, and may be renewed for a second 28-year term.

How to secure statutory copyright in a print or pictorial illustration

First. Produce Copies With Copyright Notice. Produce the print or illustration in copies by printing or other means of reproduction. To secure copyright, it is essential that the copies bear a copyright notice in the required form and position, as explained below.

Second. Publish the Work With Copyright Notice. The copyright law defines the "date of publication" as ". . . the earliest date when copies . . . were placed on sale, sold, or publicly distributed."

Third. Register Your Copyright Claim. Promptly after publication, mail to the Register of Copyrights, Library of Congress, Washington 25, D. C., two complete copies of the print or illustration as published with notice, an application on Form K, properly completed and signed, and a fee of $4. NOTE: Photographs may be deposited instead of actual copies under certain circumstances; see optional deposit instructions.

The Copyright Notice. The copyright notice for prints and pictorial illustrations should appear on the face of the work, or, if the work is a portfolio or collection of prints in book form, on the title page or verso thereof. It should ordinarily consist of the word "Copyright," the abbreviation "Copr.," or the symbol ©, accompanied by the name of the copyright owner. The year date of publication may be included in the notice, but normally it is not required unless the work could also be regarded as a "book."

Alternative Form of Notice. As an alternative, the notice for prints and illustrations may consist of the symbol ©, accompanied by the initials, monogram, or mark of the copyright owner, provided the owner's name appears on some accessible part of the copies.

Universal Copyright Convention Notice. Use of the symbol © with the name of the copyright owner and the year date of publication may result in securing copyright in countries which are parties to the Universal Copyright Convention. Example: © John Doe 1958.

Optional Deposit. For certain published works, it may be impractical to deposit actual copies because of their size, weight, fragility, or monetary value. In such cases the Register of Copyrights may permit the deposit of photographs or other reproductions instead of the actual copies, under conditions specified in the Copyright Office Regulations. If the optional form of deposit is used, it will be necessary (1) to fill out line 4 on pages 1 and 4, and (2) to deposit photographs or other identifying reproductions of the work. Detailed instructions regarding the optional deposit appear on the accompanying insert sheet.

NOTE: It is the act of publication with notice that actually secures copyright protection in a print or pictorial illustration. If copies are published without the required notice, the right to secure copyright is lost, and cannot be restored.

FOR COPYRIGHT OFFICE USE ONLY

Opinion of Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 253—October Term, 1960.

(Argued February 16, 1961 Decided April 3, 1961.)

Docket No. 26643

COVENTRY WARE, INC.,

Plaintiff-Appellant,

—v.—

RELIANCE PICTURE FRAME COMPANY,

Defendant-Appellee.

Before:

LUMBARD, *Chief Judge,*

and CLARK and SMITH, *Circuit Judges.*

Appeal from the United States District Court for the Southern District of New York, Archie O. Dawson, *Judge.*

Plaintiff Coventry Ware, Inc., appeals from a summary judgment for defendant Reliance Picture Frame Company in an action for infringement of plaintiff's copyrighted sculptured wall plaque. Judgment reversed and action remanded. Opinion below reported in D. C. S. D. N. Y., 186 F. Supp. 798.

Opinion of Court of Appeals

JAMES B. BOYER, New York City (Albert H. Oldham, of Oldham & Oldham, Akron, Ohio, on the brief), *for plaintiff-appellant.*

RAYMOND A. WERCHEN, New York City, for *defendant-appellee.*

CLARK, *Circuit Judge*:

Plaintiff, a corporation engaged in the manufacture and sale of wall plaques, caused certain wall plaques to be designed by an artist and then registered them as "Molder Sculpture" with the Register of Copyrights. The plaques contained a colored, three-dimensional, but relatively flat, design, and were intended as decorative features for walls. The plaques were made by pressing a mold in plastic, and were completed with a rigid backing sheet so that the component parts formed an integral whole which could be attached to a wall and displayed. Defendant admitted copying plaintiff's plaques and selling them at a lower price. In this action for infringement, its only defense is the alleged invalidity of the copyright notice, which appeared on a small printed label firmly attached to the *back of the plaques*. Defendant's position is that notice of copyright must appear on the front of the work of art, and that a notice appearing on the back is insufficient. The District Court, accepting this contention, granted summary judgment to the defendant, and plaintiff appeals. Judge Dawson's opinion is reported in D. C. S. D. N. Y., 186 F. Supp. 798.

The relevant sections of the Copyright Act, 17 U. S. C. §§1 *et seq.*, are section 10, section 19, which deals with the form of notice, and section 20, which prescribes the location of the notice in certain instances.

The basic notice requirement is set forth in 17 U. S. C. §10, as follows:

> "Any person entitled thereto by this title may secure copyright for his work by publication thereof with the notice of copyright required by this title; and such notice shall be affixed to each copy thereof * * *."

The form of the notice required by section 10 is set forth in 17 U. S. C. §19 and "shall consist either of the word 'Copyright,' the abbreviation 'Copr.,' or the symbol ©, accompanied by the name of the copyright proprietor and if the work be a printed literary, musical, or dramatic work, the notice shall include also the year in which the copyright was secured by publication."

Section 19 then goes on to authorize an optional "short form" of notice which may be used on works of art and other items set forth in 17 U.S.C. §5(f)-(k) as an alternative to the general form of notice described above. Such "short form" notice "may consist of the letter C enclosed within a circle, thus ©, *accompanied by the initials*, monogram, mark, or symbol of the copyright proprietor: *Provided*, That on some accessible portion of such copies or of the margin, back, permanent base or pedestal, or of the substance on which such copies shall be mounted, his name shall appear."

Section 20 prescribes the place where the notice is to appear in the case of books or other printed publications, periodicals, and musical compositions. It places no limitations on the possible location of notice in the case of works of art and kindred items, pro-

vided that the notice complies with the general requirement of section 10 that the notice be affixed to each copy. Defendant contends, however, that a limitation on the permissible location of notice for works of art may be found by implication from section 19. Defendant reasons that the short-form notice allowed by section 19 is intended to minimize the disfigurement which would result if the long form were used. In order to prevent the short form from being mere surplusage, defendant concludes, we must assume that the long form could be used only where it disfigured the work of art—i.e., on the front. Defendant does not explain, however, why Congress would have enacted a copyright law requiring disfiguring notices on the front when a nondisfiguring notice on the back would give equally adequate warning to prospective copyists. Neither does defendant say why, if any limitations on placement were intended with respect to works of art, they were not set forth in section 20, whose specific subject is location of the notice.

It should be noted that section 20 is the culmination of a long history of increasing liberalization of restrictions on the placement of notice. In the case of books and musical compositions, the placement of notice has always been rigidly and narrowly confined. But in the case of other items, a series of revisions have steadily expanded the permissible locations of notice. The acts of 1802, 2 Stat. 171, and of 1831, 4 Stat. 436, 437, both required notice to be "on the face" of nonbook and nonliterary items. This harshly restrictive requirement was abated slightly in the revision of 1870, 16 Stat. 198, 214, which provided that in the case of "a map, chart, musical composition, print, cut, engraving, photograph, painting, drawing,

chromo, statute, statuary, or model or design intended to be perfected and completed as a work of the fine arts," the notice must be placed "upon some portion of the face or front thereof, or on the face of the substance on which the same shall be mounted."

The act of 1874, 18 Stat. 78, 79, completely eliminated all references to "face or front," and required instead only that in the case of the items specified above the notice appear "upon some visible portion thereof, or of the substance on which the same shall be mounted." Even this liberalized requirement was apparently thought too restrictive, however, since Congress added a special section in 1882, 22 Stat. 181, permitting "manufacturers of designs for molded decorative articles, tiles, plaques, or articles of pottery or metal subject to copyright" to place the notice "upon the back or bottom of such articles, or in such other place upon them as it has heretofore been usual * * * to employ for the placing of * * * trade marks thereon."

The original House and Senate bills leading to the Copyright Act of 1909 continued the century old practice of prescribing the possible location of notice, but they expanded still further the number of such locations. Section 14 of H. R. 19853 and S. 6330, 59th Cong., 1st Sess. (1906), provided that in the case of maps, works of art, models or designs for works of art, reproductions of a work of art, etc., the notice "shall be applied * * * upon some accessible portion of the work itself or of the margin, back, permanent base or pedestal thereof, or of the substance on which the work shall be mounted." In the act as finally passed, however, 35 Stat. 1075, 1079 (1909), a specific requirement for location of notice was retained only

in the case of books or other printed publications, musical compositions, and periodicals. All other items were left subject only to the general requirement, now embodied in 17 U. S. C. §10, that notice be affixed to each copy.

In the light of this legislative history it is surely incredible that Congress would have intended, by implication hidden in section 19, to revive the requirement of the 1802 and 1831 acts that notice appear on the front. All the copyright legislation of the nineteenth century had prescribed in unambiguous the permissible location of notice, and the 1909 revision contained a section dealing specifically with the location of notice and prescribed such location only for three types of items. Thus the failure to limit the placement of notice for other items does not arise from any lack of familiarity with the drafting devices necessary to accomplish that result. Section 19 should not be read to impose a restriction on placement which, had it been intended by Congress, would certainly have been expressly stated.

Defendant's restrictive view of section 19 is also inconsistent with a large body of judicial authority upholding notices which are not on the "front" of the work of art. This court and the District Court for the Southern District of New York have recently rendered a number of decisions upholding copyrighted works of art on dress fabric where the notice appeared on the selvage or margin of the fabric, rather than on the design itself. *Peter Pan Fabrics, Inc.* v. *Martin Weiner Corp.*, 2 Cir., 274 F. 2d 487; *Peter Pan Fabrics, Inc.* v. *Dixon Textile Corp.*, 2 Cir., 280 F. 2d 800, 802; *Peter Pan Fabrics, Inc.* v. *Candy Frocks, Inc.*, D. C. S. D. N. Y., 187 F. Supp. 334; *H. M. Kolbo Co.* v.

Armgus Textile Co., D. C. S. D. N. Y., 184 F. Supp. 423, affirmed 2 Cir., 279 F. 2d 555. We have also sustained a copyright on a pair of earrings, though the notice was stamped upon only one earring of a pair. *Boucher* v. *Du Boyes, Inc.*, 2 Cir., 253 F. 2d 948, certiorari denied 357 U. S. 936. In *Scarves by Vera, Inc.* v. *United Merchants & Mfrs., Inc.*, D. C. S. D. N. Y., 173 F. Supp. 625, works of art contained on ladies' blouses were copyrighted by a notice upon a label sewed into a side seam. Perhaps the best summary of the applicable principle may be found in the decision of Judge Bicks in *Trifari, Krussman & Fishel, Inc.* v. *Charel Co.*, D. C. S. D. N. Y., 134 F. Supp. 551, 554, enjoining the copying of costume jewelry, copyrighted as a work of art, where the notice appeared on the clasp. He stated: "It is so located, however, as to apprise anyone seeking to copy the article, of the existence of the copyright and is, therefore, sufficient to satisfy the statutory requirements." See also *Shapiro, Bernstein & Co.* v. *Jerry Vogel Music Co.*, 2 Cir., 161 F. 2d 406, certiorari denied 331 U. S. 820; *Fleischer Studios* v. *Ralph A. Freundlich, Inc.*, 2 Cir., 73 F. 2d 276, certiorari denied *Ralph A. Freundlich, Inc.* v. *Fleischer Studios*, 294 U. S. 717.

Defendant also suggests that the notice, having been pasted on by a gummed label, was not "affixed" within the meaning of section 10. We find that it was "affixed." The point does not require discussion.

On remand it would seem appropriate that the court grant the plaintiff's motion for summary judgment, since the defendant has admitted copying plaintiff's plaques. We shall leave to the District Court the settling of appropriate remedies.

Judgment reversed and action remanded for proceedings in accordance with this opinion.

Judgment of Court of Appeals

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the third day of April one thousand nine hundred and sixty-one.

Present: HON. J. EDWARD LUMBARD,
Chief Judge,

HON. CHARLES E. CLARK,
HON. J. JOSEPH SMITH,
Circuit Judges.

COVENTRY WARE, INC.,
Plaintiff-Appellant,

v.

RELIANCE PICTURE FRAME COMPANY,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

Judgment of Court of Appeals

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed and that the action be and it hereby is remanded for proceedings in accordance with the opinion of this court; with costs to the appellant.

A. DANIEL FUSARO,
Clerk

Endorsed:

United States Court of Appeals
Second Circuit

Filed April 3, 1961

A. Daniel Fusaro, Clerk